IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4718 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JOGARAM @ BHOLU @ KALU TARAJI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4718 of 2002

MR AR SHAIKH for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Surat City dated 10.3.2002 in exercise of powers vested in him under

section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The detaining authority has considered the papers placed by the sponsoring authority including the statements of two witnesses recorded for the unregistered criminal offences.

For recording the subjective satisfaction, the detaining authority has considered mainly three different criminal offences registered with Varachha Police Station for the offence punishable under sec. 454, 457, 380, 114 of IPC etc. All these three incidents have occurred on 17.10.2001, 29.12.2001 and 27.1.2002 respectively. The order is challenged on number of grounds by the petitioner, however, learned counsel Ms. Datta has concentrated her arguments mainly on the point that the order of detention has been passed wrongly and in violation ofstatute as well as safe guards enshrined in Art. 22(5) of the Constitution of India as the activities of the petitioner was not any way adverse or prejudicial to the maintenance of public order.

Three stray incidents of theft were registered by the police. If for the sake of arguments, it is accepted that the petitioner is involved in all these three cases, even then the activities of the petitioner can be said to be adverse or prejudicial to the maintenance of "law and order" and not "public order". Learned counsel has placed reliance on the following three decisions:

i) Mustakmiya Jabbarmiya Shaikh vs. Commissioner of Police, 1005(2) GLR P. 1268;

ii) Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors., reported 2000(1) GLH P. 393;

iii) Unreported decision rendered in Special Criminal Application No. 1681 of 1992 by the Division Bench of this Court (Coram: A.P. Ravani & J.M. Panchal, JJ.)

It is argued that as per the ratio propounded by these decisions, the activities of the petitioner cannot be said to be dangerous or any way affecting the maintenance of public order.

It is rightly argued that the detaining authority is supposed to reach to a conclusion that the activities prejudicial to the maintenance of public order and such

subjective satisfaction is to be recorded positively and on merits only then the powers under sec. 3 of the PASA Act can be exercised by the authorised officer.

In the present case, the powers are not properly exercised by the detaining authority. So, the order of detention requires to be quashed. The observation of the Apex Court in para-8 of the decision in the case of Mustakmiya Jabbarmiya Shaikh (supra) reported in 1995(2) GLR P. 1268, is considered. In the third decision, the Division Bench of this Court has quashed the order of detention where the detenu was found involved in 27 criminal cases mainly punishable under sec. 380, 379, 454, 457 etc. Considering the ratio of above three decisions, even this Bench has quashed more than one order of detention. It is not necessary to reproduce relevant paras of above cited decisions where the Courts have drawn distinction between the 'law and order' and 'public order'. For short, the petition shall have to have allowed.

Ld. AGP Mr. HH Patel has tried to point out that in view of the fact that the petitioner has been found involved in lifting very valuable gold ornaments, the apprehension is that he would indulge in the similar activities. This aspect has been rightly considered by the detaining authority. But in view of the settled legal proposition, it would be difficult for this Court to say that the activities of the petitioner detenu can be said to be adverse to the maintenance of public order.

In the result, this petition is allowed. The impugned order of detention dated 10.3.2002 passed by Police Commissioner, Surat City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
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